

DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548 27362

FILE: B-213010

DATE: February 8, 1984

MATTER OF: Vigilantes, Inc.

DIGEST:

1. As a general rule, a protester has the burden of affirmatively proving its case. GAO will not conduct an independent investigation to establish the validity of a protester's speculative statements, but will instead essentially rely upon the factual record developed by the parties.
2. The failure of a firm to receive a copy of the solicitation does not prevent award and require resolicitation where there was a significant effort to obtain competition, a reasonable price was obtained, and there was no deliberate attempt to exclude the protester from competition. This rule applies even though only one offer is received.
3. Unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. Where the written record not only fails to demonstrate bias or discrimination against the protester, but in fact suggests an alternative explanation for the agency actions in dispute, then the protester's allegations are properly to be regarded as mere speculation.
4. Where the protester fails to show that the alleged employment of a former employee of the procuring agency by the awardee and the alleged employment of a former employee of the awardee by the procuring agency in any way influenced the procurement, then protester has failed to carry its burden of affirmatively proving that the procurement was tainted by conflict of interest.

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Vigilantes, Inc., protests the award of a contract for federal court security services in the Commonwealth of Puerto Rico under request for proposals No. 83-0001, issued by the Department of Justice, United States Marshals Service, for such services in the District of Columbia, the state of Maryland and Puerto Rico. Vigilante complains that it did not receive a copy of the solicitation and alleges that the procurement was tainted by a conflict of interest. We deny the protest.

In preparation for a scheduled October 1, 1983 assumption by the Marshals Service from the General Services Administration of responsibility for providing federal court security services, the McLean, Virginia office of the Marshals Service issued the RFP on June 14, 1983 after having first synopsised the procurement in the May 3, 1983 issue of the Commerce Business Daily (CBD). While Vigilantes had been providing federal court security services in Puerto Rico for a number of years prior to the issuance of the RFP, it did not receive a copy of the RFP nor, allegedly, otherwise learn of it until discovering the existence of the solicitation on September 7, well after the July 14 closing date for receipt of proposals. Vigilantes thereupon filed this protest.

Although 68 firms received copies of the RFP, only one firm submitted to the contracting officer in McLean a proposal for the work in Puerto Rico. Finding the price as offered and negotiated to be reasonable, and citing the urgent need for continued security services after the October 1 relinquishment of responsibility by GSA, the Marshals Office awarded a contract for federal court security services in Puerto Rico notwithstanding the protest.

We initially note that Vigilantes has asked us to conduct an investigation into the facts of this case. However, a protester has the burden of affirmatively proving its case, and as a general rule our Office will not conduct an independent investigation to establish the validity of

a protester's speculative statements, see Louis Berger & Associates, Inc., R-208502, March 1, 1983, 83-1 CPD 195, but will instead essentially rely upon the factual record developed by the parties.

Vigilantes contends that its failure to receive a copy of the RFP, a failure it finds "very strange" since it was already providing federal court security services in Puerto Rico, invalidates the procurement. Although the Marshals Service admits that it was "unfortunate" that Vigilantes did not receive a copy of the RFP, it nevertheless contends that no deliberate attempt was made to exclude Vigilantes from competition, that the government made a significant attempt to obtain competition, and that the government obtained a reasonable price.

We have held that the failure of a firm to receive a copy of the solicitation does not prevent award and require resolicitation where the agency made a significant effort to obtain competition, a reasonable price was obtained, and there was no deliberate attempt to exclude the firm from competition. This rule applies even where only one offer is received. See Blast Deflectors, Inc., B-212610, January 9, 1984, 84-1 CPD _____. Vigilantes has neither explicitly alleged nor in fact shown that the Marshals Service did not make a significant attempt to obtain competition. The announcement of the solicitation in the CBD and the distribution of copies of the RFP to 68 firms tends to corroborate the agency's contention that it made a significant effort to obtain competition. While Vigilantes does state that a subscription to the CBD is very expensive and that the CBD is practically unknown in Puerto Rico, we consider this neither an allegation nor evidence that the agency made no significant, overall effort to obtain competition. We note that the Federal Procurement Regulations (FPR) specifically commend the CBD to contracting officers as "a valuable source of information on proposed procurements" for potential suppliers, FPR § 1-1.1002-1 (amend. 153, September 1975), and generally require its use in civilian agency procurements of \$5,000 and above, FPR § 1-1.1003-2 (amend. 153, September 1975). Nor does Vigilantes dispute the Marshals Service's contention that

the government obtained a reasonable price. Finally, although Vigilantes finds it "very strange" that it did not receive a copy of the RFP and alleges that none of the copies was sent to Puerto Rico, we observe that unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. Since the written record not only fails to demonstrate bias or discrimination against Vigilantes or Puerto Rican firms in general, but in fact suggests that any oversight may have resulted from the transfer of responsibility for providing the security services from GSA to the Marshals Service's office in McLean, Vigilantes' allegations are properly to be regarded as mere speculation. See Weardco Construction Corp., B-210259, September 2, 1983, 83-2 CPD 296.

Vigilantes also alleges that a possible conflict of interest exists, contending that a former United States marshal in Puerto Rico is now employed by the awardee and a former employee of the awardee, a brother of the former marshal, is now a United States marshal in Puerto Rico. However, the Marshals Service's office in Puerto Rico has indicated that it is unaware of any present or former employees with the alleged personal and employment histories. In any case, given Vigilante's failure to show that the alleged events and relationships in any way influenced this procurement, and given the fact that the procurement was undertaken by the Marshals Service's McLean, and not its Puerto Rico office, we find that Vigilantes has failed to meet its burden of affirmatively proving its case on this point. See Kirk-Mayer, Inc., B-208582, September 2, 1983, 83-2 CPD 288; Louis Berger & Associates, Inc., *supra*.

The protest is denied.

Milton J. Fowler
for Comptroller General
of the United States